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SEP 7 2001

OFFICE OF PETITIONS

In re Application of
Bennai, et al.
Application No. 09/736,298
Filed: December 15, 2000
Attorney Docket No.: Q62303
For: COMMUNICATION METHOD USING ONE:
ACCESS

:
:
: DECISION DISMISSING
: PETITION UNDER 37 CFR
: 1.47(a)
:

This is in response to the petition under 37 CFR 1.47(a), filed August 16, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 15, 2000 without an executed oath or declaration and naming Lahcen Bennai and Christian Laroque as joint inventors.

Accordingly, on February 16, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and surcharge for its late filing and a verified English translation of the application and required fee. The instant petition was filed in response.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks item (1) set forth above. The petition lacks supporting evidence that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or declaration.

The petition states that the inventor cannot be located. The declaration of Bernard Lemoureux states that a declaration and assignment were sent to the inventor at the inventor's last known

address and that the envelope containing these papers were returned to sender marked "UNCLAIMED."

The petition lacks any evidence that diligent effort has been made to locate the inventor and provide the inventor with a copy of the application papers. Where inability to find or locate a named inventor(s) is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. The statement(s) of facts must be signed, where at all possible, by a person having *firsthand knowledge* of the facts recited therein. Statements based on hearsay, will not normally be accepted. At the very least, a search of telephone directories should be undertaken of the regions where it is suspected the non-signing inventor may reside. Petitioner may wish to utilize regional, national, or international registries to seek information regarding this inventor. Copies of the results of such searches must be referred to in any renewed petition. See, MPEP 409.03(d).

Petitioner is required to undertake additional research efforts to determine if the non-signing inventor can be located. If the non-signing inventor is located, petitioner should forward a copy of the application papers (specification, claims, and drawings) to the non-signing inventor.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Christina P. Carter for

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Office of the Deputy Commissioner
for Patent Examination Policy